

**AN ORDINANCE TO AMEND CHAPTER 45 OF THE CITY CODE  
REGARDING STORM WATER RATES AND CHARGES.**

**WHEREAS**, the City Council has enacted Chapter 45 of the Wilmington City Code, Article II of which includes provisions regarding sewer rates and charges and storm water rates and charges; and

**WHEREAS**, the Department of Public Works conducted a study to establish an equitable system of storm water charges for recovering costs of capital improvements, and operation and maintenance costs including debt service and routine replacements related to storm water management, combined sewer overflow mitigation, surface water quality improvements and watershed protection initiatives; and

**WHEREAS**, after reviewing the existing storm water charge program, the Department of Public Works determined that the following amendment was necessary to keep the program equitable: the storm water class of Direct Discharger Permit Holder under Table 2: "All Other Storm Water Classes" is eliminated and the definition of Direct Discharger Permit Holder is deleted; and

**WHEREAS**, a provision is added describing the purpose and intent of the storm water charge; and

**WHEREAS**, the City Council has enacted various ordinances establishing sewer rates and charges, the most recent being Substitute No 1 to Ordinance No. 08-017; and

**WHEREAS**, City Council has enacted ordinances amending the text of the storm water rates and charges, the most recent being Ordinance No. 08-083; and

**WHEREAS**, the Council deems it necessary and appropriate to adopt this amendment to Section 45-53 effective in fiscal year 2010 beginning on July 1, 2009.

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** Chapter 45 of the City Code is hereby amended by enacting for fiscal year 2010 the following amendments to the provisions of Section 45-53 as set forth herein:

**ARTICLE II, CHAPTER 45, SEWERS; SANITARY AND STORM WATER RATES AND CHARGES”.**

**45-53 Sanitary and Storm Water Rates and Charges.**

**(a) Definitions.** The following words, terms and phrases as used in this Section shall mean the following:

*“All Other Storm Water Classes”* refers to the various storm water classes, except the Single Family Residential Storm Water Class and the Condominium Storm Water Class.

*“Cemetery”* means property used exclusively for or planned for the burial or other disposal of dead persons and provided that (1) the owner is irrevocably dedicated to charitable purposes; (2) upon the liquidation, dissolution, or abandonment by the owner, the benefits from the property will not inure to the benefit of anyone except a community chest, fund, foundation, or corporation organized and operated for charitable or religious purposes; and (3) the use of such property is open to the general public, regardless of sex, race, color, or national origin. Should any of the conditions in this definition conflict with any established religious law, however, the owner shall not be required to comply with such condition.

(\*Cross reference - Based on definition in New Castle County Code Section 14.06.701.)

*“Condominium”* refers to the condominium parcels that are designated as such in the Assessor’s records of the New Castle County Department of Land Use, and includes both residential and non-residential condominiums.

*“Condominium Unit”* refers to one dwelling within a residential condominium or one component within a non-residential condominium.

~~"Direct Discharger Permit Holder" means a parcel which has a National Pollutant Discharge Elimination System ("NPDES") industrial activity permit or General Storm Water Permit for industrial activity issued pursuant to the federal Clean Water Act, 33 U.S.C. §§1251-1387, that covers 100% of the parcel, is in compliance with such permit and has no storm water discharge connection, including downspouts from buildings, to public sanitary sewer pipes, combined pipes and/or stormwater pipes. Such permit must include meaningful monitoring, inspection, sampling and storm water pollution prevention plan requirements. A connection to the City's sanitary pipes for a sanitary only connection is allowable.~~

"*Dwelling*" means one or more rooms, designed, and occupied or intended for occupancy as separate living quarters, with a kitchen, sleeping area and bathroom provided for the exclusive use of a single household.

"*Equivalent Storm Water Unit*" or "*ESU*" is a unit of measure that is set to equal the median impervious area square footage of the non-vacant, non-exempt parcels of the Single-Family Residential Storm Water Class.

"*Equivalent Storm Water Unit Factor*" or "*ESU Factor*" means the number of ESUs calculated for each parcel in the Condominium Storm Water Class and the All Other Storm Water Classes by dividing a parcel's impervious area by the ESU.

"*Equivalent Storm Water Quarterly Unit Rate*" or "*ESU Rate*" means the Storm Water Charge rate imposed quarterly on the non-vacant, non-exempt parcels of the First Tier impervious area, of the Single Family Residential Storm Water Class.

"*Equivalent Storm Water Unit Ratio*" or "*ESU Ratio*" means the number of ESUs assigned to each parcel in the Single Family Residential Storm Water Class, based on the tier assigned to each parcel.

"*Exempt Parcel*" means all City owned parcels. A storm water charge will not be assessed on City owned parcels.

*"Impervious Area"* means the total square feet of hard surface areas including buildings, driveways, any attached or detached structures, and paved or hard-scaped areas, or other surface areas that behave like an impervious area under wet weather conditions, that either prevent or restrict the volume of storm water that can enter into the soil, and/or thereby cause water to run off the surface in greater quantities or at an increased rate of flow than what would have occurred under natural undisturbed conditions.

*"Parcel"* means any real property, either developed or undisturbed, which is assigned a tax parcel number.

*"Paved Parcel"* means a parcel upon which there is no structure except for paving, and which is assigned a "Paved" occupancy code in the Assessor's records of the New Castle County Department of Land Use.

*"Runoff Coefficients"* means those multipliers used to estimate the impervious area for each of the "All Other Storm Water Class" parcels based on the square footage of the parcels as found in the New Castle County Department of Land Use records. A list of the runoff coefficients used for the City is found in Table 2 below.

*"Single Family Residential Storm Water Class"* means parcels with a single family, detached, semi-detached or attached dwelling.

*"Storm Water Class"* means classes of uses defined such that the customers within a class have similar land use characteristics. A list of the storm water classes defined for the city is found in Section 45-53(c) of this Chapter.

*"Storm Water Charge"* means the quarterly charge for storm water management assessed to a parcel within the city based on the use of the parcel on the last day of the quarter of the billing period.

*"Tier"* means the tier value that is assigned to each parcel in the Single Family Residential Storm Water Class, based on the parcel's actual impervious area.

"*Vacant Parcel*" for the purposes of this article only, means a parcel upon which there is no structure except for some marginal structure such as fencing, and which is assigned a "Vacant" occupancy code in the Assessor's records of the New Castle County Department of Land Use.

(b) **Sanitary Sewer Charge.** The sanitary sewer charge for parcels receiving their water supply from the water division of the city and located within the city shall be a percentage (W) of the water rent applicable for the same period and the same percentage (W) of any water rent levied for any or all portions of the year, as provided in section 45-58 of this chapter.

(c) **Excessive sewage strength surcharge.** All properties receiving their water supply from the water division of the city shall be subject to an excessive sewage strength surcharge on any water or waste discharge computed on the basis of excessive biochemical demand (BOD) and excessive suspended solids (SS) in accordance with the following formula:

$$S = Q \times 8.34 [R_{BOD} (C_{BOD} - 300) + R_{SS} (C_{SS} - 300)]$$

Where:

S	= Surcharge in dollars
Q	= Volume of water consumed in million gallons
8.34	= Conversion factor for lbs. per gallon of water
$R_{BOD}$ ; $R_{SS}$	= Unit charges in dollars per pound of BOD and suspended solids respectively
$C_{BOD}$ ; $C_{SS}$	= Strength concentration of BOD and suspended solids respectively, in all parts per million by weight

(d) **Storm Water Charge.** The Storm Water Charge represents an equitable system for recovering costs related to all aspects of storm water management, including but not limited to: capital improvements including debt service; operation and maintenance costs including routine replacements; combined sewer overflow mitigation and long term control plan creation and implementation; compliance with all current and future storm water and

surface water regulatory requirements; surface water quality monitoring, inspection, management and improvement projects; flooding mitigation; inspections of storm water management facilities; billing and administration; plan review and inspection of sediment control and storm water management plans and practices; acquisition of interests in land including easements; and watershed planning and protection initiatives. All parcels that are within the city's corporate boundaries, shall be assessed a quarterly Storm Water Charge as per the provisions of this article. In the event that the owner of a parcel and the user of a parcel are not the same, the owner shall be liable for the Storm Water Charge.

The Storm Water Charge shall be determined as per the provisions of this article, based on the Equivalent Storm Water Unit "ESU" and ESU Rate. The ESU, the ESU Rate and the Single-Family Residential Tiers may be amended by City Council from time to time as necessary. The Storm Water Charge for the various storm water classes shall be determined as follows:

(1) *Single-Family Residential Storm Water Classes.* For the Single-Family Residential storm water classes, a four-tiered storm water charge is established to accommodate the wide range of impervious area square footage that exists among the single-family residential parcels in the city. The four tiers of impervious area and the storm water charge for each tier are as shown in Table 1:

**Table 1: Single-Family Residential Parcels**

<b>Tier</b>	<b>Impervious Area (square feet)</b>	<b>Equivalent Storm Water Unit Ratio(ESU ratio)</b>	<b>Quarterly Storm Water Charge*</b>
Tier 1	0 to 799	1.00	\$9.16
Tier 2	800 to 1,299	1.45	\$13.28
Tier 3	1,300 to 2,399	2.48	\$22.71
Tier 4	2,400 and over	4.40	\$40.30

\*The quarterly Storm Water Charge is calculated by multiplying the assigned ESU Ratio, by the ESU Rate.

Based on a parcel's actual impervious area, based on the information in New Castle County's Department of Land Use records, the Department of Public Works shall assign a Tier and apply the associated ESU ratio to each single-family residential parcel. A Storm Water Charge will be assessed quarterly based on the assigned ESU ratio and ESU Rate. In the event of a newly constructed single-family residential dwelling, the Department of Public Works shall assign a Tier and ESU ratio upon issuance of the Certificate of Occupancy for that dwelling.

(2) *Condominium Storm Water Class.* The Storm Water Charge for a condominium shall be the calculated ESU Factor multiplied by the ESU Rate. The Department of Public Works shall calculate an ESU Factor based on the estimated impervious area, based on the information in New Castle County's Department of Land Use records. The bill will be sent to the condominium association.

(3) *All Other Storm Water Classes.* The Storm Water Charge for all other Storm Water Classes shall be the calculated ESU Factor multiplied by the ESU Rate. The

Department of Public Works shall calculate an ESU Factor based on the estimated impervious area. The impervious area will be estimated by applying the Runoff Coefficients set forth in Table 2, to a parcel's gross parcel area, based on the information in New Castle County's Department of Land Use records.

**Table 2: All Other Storm Water Classes**

<b>1</b>	<b>2</b>	<b>3</b>
<b>Storm Water Class</b>	<b>Description*</b>	<b>Runoff Co-Efficients</b>
COM	Commercial	0.95
GOV	Government	0.95
IND	Industrial	0.90
INS	Institutional	0.90
MFA	Multi-Family Apartments	0.75
DDP	Direct Discharger Permit Holder	0.10
PAR	Parks & Cemeteries	0.25
PAV	Paved	0.95
PKG	Parking Structures	0.95
REC	Recreational Arenas/Playgrounds	0.35
UTI	Utility	0.90
VAC	Vacant	0.30

\*Storm Water Classes are based on New Castle County Department of Land Use occupancy codes assigned to each parcel.

(4) *Exempt* – All City-owned parcels are exempt from any Storm Water Charge.

(5) *Assessment of Storm Water Charge.* The owner of record of a parcel will be assessed the Storm Water Charge. In the case of joint ownership of a parcel, the storm water charge shall be billed to the owner designated as the primary owner in the Assessor's records of the New Castle County Department of Land Use. In the case of condominiums, the Storm Water Charge shall be billed to the condominium association.

(6) *Credit.* A system of credits, which may reduce a parcel's quarterly Storm Water Charge, shall be established for all the All Other Storm Water Classes. A Storm Water Charge Credit shall be issued to a parcel at the discretion of the Commissioner of the Department of Public Works and upon written application by the parcel owner for employing structural or non-structural best management practices or other storm water management practices on-site, which significantly reduces the quantity of storm water run-off or significantly improves the quality of storm water run-off from the parcel.

(7) *Appeal procedure.* An owner of a parcel for which a Storm Water Charge has been assessed, may appeal for that parcel: (1) the calculation of the Storm Water Charge; (2) the assigned storm water class; (3) the assigned tier, if applicable; and (4) the eligibility for a credit. The appellant must file the appeal in writing to the Commissioner of the Department of Public Works.

The appellant shall submit a land survey prepared by a registered surveyor showing dwelling units, gross parcel area, total impervious area, type of surface material, as appropriate, and any other information that the Commissioner shall specify. The Commissioner may waive in writing the submission of a land survey. An appeal may be filed at any time, but any adjustment to the assessment in favor of the appellant shall only be applied prospectively. No retroactive adjustments to the Storm Water Charge will be made in favor of the appellant.

a. The burden of proof shall be on the appellant to demonstrate, by clear and convincing evidence the validity of the appeal.

b. The filing of a notice of appeal shall not stay the imposition, calculation or duty to pay the Storm Water Charge; the appellant shall pay the Storm Sewer Charge, as stated in the billing.

c. The Commissioner shall send a written copy of the decision to the appellant with a copy to the Director of Finance.

(8) *Equivalent Storm Water Unit.* The Equivalent Storm Water Unit is 789 square feet.

(9) *Equivalent Storm Water Quarterly Unit Rate.* The Equivalent Storm Water Quarterly Unit Rate is \$9.159.

(10) *Cemetery Storm Water Management Easement Agreements.* Cemeteries in the city with gross parcel area of more than one (1) acre present unique opportunities for the city to work with the owners of such parcels to implement onsite alternative storm water management solutions designed to reduce the city's storm water management burden in the combined sewer system or improve in-stream surface water quality. Accordingly, the Commissioner of the Department of Public Works is hereby authorized to enter into easement agreements, memoranda of understanding, or maintenance agreements (Cemetery Storm Water Management Easement Agreements or "CSWMEA") with cemeteries that have a gross parcel area of more than one (1) acre for the purposes of designing, constructing, maintaining and repairing alternative storm water management solutions or best management practices that will reduce the city's storm water management burden in the combined sewer system or improve in-stream surface water quality. The Cemetery Storm Water Management Easement Agreements may be multi-year agreements and may provide for in-kind and financial consideration to be given to the cemetery for city access rights if deemed appropriate by the Commissioner.

The tax parcel subject to the CSWMEA must have a New Castle County occupancy code of "371 – CEMETERIES & CREMATORIES".

**SECTION 2.** This Ordinance shall become effective on July 1, 2009.

First Reading.....February 5, 2009  
Second Reading.....February 5, 2009  
Third Reading.....April 2, 2009

Passed by City Council, April 2, 2009


  
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President of City Council

ATTEST:   
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City Clerk

Approved as to form this 4<sup>th</sup> day of  
February, 2009

  
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Senior Assistant City Solicitor

Approved this 6<sup>th</sup> day of April, 2009.

  
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Mayor

**SYNOPSIS:** **Wilmington City Code Sec. 45-53, Storm Water Rates and Charges**, is amended to add text describing the purpose and intent of the storm water charge in §45-53(d). In addition, following evaluation of the overall storm water rates and charges it was determined that the following amendment was necessary to keep the program equitable: delete the definition of Direct Discharger Permit Holder and eliminate the Direct Discharger Permit Holder storm water class in Table 2: "All Other Storm Water Classes".

Ordinance 09-003

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**FISCAL IMPACT STATEMENT: This ordinance will increase revenue for the storm  
water charge program by approximately \$900,000 annually at the existing rates.**